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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and the
STATE OF CALIFORNIA *ex rel.*,
SHELBY EIDSON,

Plaintiffs,

vs.

AURORA LAS ENCINAS LLC, LINDA
PARKS, SIGNATURE HEALTHCARE
SERVICES LLC, AND DOES 1
THROUGH 10, jointly and severally,

Defendants.

Case No.: CV 10-1031 JAK (RZx)

(Hon. John A. Kronstadt)

**RELATOR'S OPPOSITION TO
DEFENDANTS AURORA LAS
ENCINAS LLC, AND SIGNATURE
HEALTHCARE SERVICES LLC'S
MOTION TO DISMISS PURSUANT
TO RULE 12(b)(1) OF THE
FEDERAL RULES OF CIVIL
PROCEDURE**

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1 Plaintiff/Relator Shelby Eidson submits the following Opposition to the
2 Motion to Dismiss of Defendants Aurora Las Encinas, LLC and Signature Healthcare
3 Services, LLC.

4 INTRODUCTION

5 Plaintiff/Relator Shelby Eidson ("Relator") has brought suit against defendants
6 on behalf of the United States government and the State of California for violations
7 of the Federal False Claims Act ("FCA") and the California False Claims Act
8 ("CFCA"). Defendants Aurora Las Encinas, LLC and Signature Healthcare Services,
9 LLC ("Defendants") have moved to dismiss Relator's case claiming a lack of subject
10 matter jurisdiction. Defendants base their motion on there claim that: (1) there have
11 been public disclosures of the allegations and transactions disclosed in Relator's
12 complaint(s) pursuant to 31 U.S.C. §3730(e)(4)(A), and (2) Relator is not an
13 "original source" pursuant to 31 U.S.C. §3730(e)(4)(B).

14 Relator maintains, however, that this Court has subject matter jurisdiction to
15 address her claims. Relator asserts that Defendants have inaccurately characterized
16 numerous documents as "public disclosures" that are, in fact, not "public disclosures"
17 under the statute. Furthermore, even assuming *arguendo* that such documents were
18 public disclosures, Relator is an "original source" because she has "direct and
19 independent knowledge" of the allegations contained in her complaint(s), and
20 "voluntarily provided the information to the government, prior to filing this action."
21 31 U.S.C. § 3730(e)(4)(B). Even where there has been true "public disclosure," a qui
22 tam suit may still proceed if the relator is an "original source" within the meaning of
23 subsection 3730(e)(4)(B).

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ARGUMENT

I. Defendants' Motion Should be Treated as a Motion for Summary Judgment.

A challenge to jurisdiction under the public disclosure bar is “necessarily intertwined with the merits’ [sic] and is, therefore, properly treated as a motion for summary judgment.” *U.S. ex rel. Jamison v. McKesson Corp.*, 649 F.3d 322, 326(5th Cir. 2011).¹ In the context of an FCA claim, a defendant asserting a jurisdictional argument under the public disclosure bar must “first point to documents plausibly containing allegations or transactions on which [the relator’s] complaint is based.” *Jamison*, 649 F.3d at 327. “Then, to survive summary judgment, [the relator] must produce evidence sufficient to show that there is a genuine issue of material fact as to whether his action was based on those disclosures,” or that he is an original source of the complaint’s allegations. *Id.* As with any summary judgment motion, in deciding jurisdiction under the public disclosure bar, the Court may not weigh the evidence or evaluate the credibility of witnesses, and all justifiable inferences will be made in the non-moving party’s favor. *Id.*

II. This Court Has Subject Matter Jurisdiction

“The False Claims Act provides penalties for one who ‘knowingly presents... a false or fraud claim’ to the government, 31 U.S.C. § 3729(a), and incentives to whistleblowers who expose the fraud. 31 U.S.C. § 3730.” *U.S. ex rel. Chen Cheng Wang v. FMC Corp.*, 975 F.2d 1412, 1415 (9th Cir. 1992). To discourage opportunistic *qui tam* relators, however, the FCA contains the so-called “public disclosure bar”. *Schindler Elevator Corp. v. United States ex rel., Kirk*, No.10-188 at *2 (May 16, 2011). The public disclosure bar of the FCA provides: “No court shall

¹ See also, *U.S. ex rel. Ramseyer v. Century Healthcare Corp.*, 90 F.3d 1514, 1518 (10th Cir. 1996) (“When a court’s subject matter jurisdiction is dependent upon the same statute that provides the substantive claim in the case, the jurisdictional question is necessarily intertwined with the merits. In a *qui tam* suit brought under the [False Claims Act], the jurisdictional issue of “public disclosure” clearly arises out of the same statute that creates the cause of action. Thus, a challenge under the FCA jurisdictional bar is necessarily intertwined with the merits.”)(internal citations omitted).

1 have jurisdiction over an action under this section based on the public disclosure of
 2 allegations or transactions in a . . . hearing . . . report . . . investigation, or from the
 3 news media . . . unless . . . the person bringing the action is an original source of the
 4 information." 31 U.S.C. § 3730(e)(4)(A). "For purposes of this paragraph, 'original
 5 source' means an individual who has direct and independent knowledge of the
 6 information on which the allegations are based and has voluntarily provided the
 7 information to the Government before filing an action under this section which is
 8 based on the information." 31 U.S.C. § 3730(e)(4)(B).

9 In analyzing whether the public disclosure bar applies, courts apply a two-part
 10 test. First, the court must determine whether there has been a prior 'public disclosure'
 11 of the 'allegations or transactions' underlying the *qui tam* suit. *A-1 Ambulance*
 12 *Service, Inc. v. State of California*, 202 F.3d 1238, 1243 (9th Cir. 2000). *If and only if*
 13 *there has been such a disclosure, a court must next inquire whether the relator is an*
 14 *"original source."* *Id.* Applying this test to the instant matter, it is clear that this
 15 Court has subject matter jurisdiction to hear Relator's claims.

16 **A. Defendants Cannot Prove a Public Disclosure Triggering the Public**
 17 **Disclosure Bar**

18 Defendants cannot show that there was prior "public disclosure" of the
 19 "allegations or transactions" underlying Relator's *qui tam* suit. Although some
 20 limited information regarding Defendants' hospital was published prior to the filing
 21 of Relator's Complaint, the information published did not constitute a "public
 22 disclosure" of the 'allegations or transactions' underlying the Relator's suit. Even if
 23 it did, the disclosure is not one that would bar Relator's complaint, as she is an
 24 "original source" as to the patient allegations challenged by Defendants in their
 25 motion.

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1 ***1. LA Times articles do not qualify as “public disclosures” of***
 2 ***Relator’s “allegations and transactions”***

3 Defendants argue that Relator’s Complaint should be dismissed because it
 4 contains – in part – similar allegations as were published in three Los Angeles Times
 5 articles. (Memorandum of Points and Authorities in Support of Defendants’ Motion
 6 to Dismiss (“Memo”), p.4:16-19, 21-24; p. 5:2-4.) Defendants *do not*, however,
 7 allege that the Los Angeles Times articles reported any allegations of fraud occurring
 8 at defendant Hospital, and certainly not that same allegations of fraud alleged by
 9 Relator. *Id.* This distinction is fatal to Defendants’ argument that the LA Times
 10 articles are public disclosures.

11 The exhibited LA Times articles report, among other things, numerous
 12 deficiencies in patient care, unsanitary conditions, chronic understaffing, death and
 13 rape (See Exhibits E, K and N to Declaration of Patric Hooper (“Hooper Decl.”) filed
 14 under seal in support of co-Defendant Linda Parks’ Motion to Dismiss, Dkt 300-1..)
 15 These deficiencies, despite being published, fail to qualify as “public disclosures”
 16 under the statute because, while they reveal the “true state of facts,” i.e. that
 17 defendant Hospital provides substandard care, they do not reveal the “misrepresented
 18 state of facts,” i.e. that defendant Hospital does so in an effort to commit fraud
 19 against the Medicare program. *See U.S. ex rel. Foundation Aiding the Elderly v.*
 20 *Horizon West (“Foundation Aiding the Elderly”),* 265 F.3d 1011, 1015 (9th Cir.
 21 2001).

22 Put simply, disclosures which state that a patient died, or was denied
 23 translation services, or that a hospital was dangerously understaffed, does not lead
 24 any reasonable person to therefore conclude, absent any information about
 25 misrepresentations or fraud, that these issues occurred because of an underlying
 26 scheme to defraud the Medicare program.

1 **2. CMS Surveys do not constitute “public disclosures” of Relator’s**
 2 **“allegations and transactions”**

3 Defendants reference two CMS Surveys conducted at defendant Aurora Las
 4 Encinas Hospital in support of their public disclosure claim. (Memo at p.4:19-20; 5:
 5 8-10. See also, Exhibits F and P to Hooper Decl.). Defendants take the position that
 6 CMS surveys are “reports,” and that they constitute “public disclosures,” pursuant to
 7 the statute.

8 It is not clear whether CMS Surveys are “reports” as defined by the statute. *In*
 9 *Foundation Aiding the Elderly*, the Ninth Circuit declined to make that
 10 determination. *Id.* at 1012. Regardless, Relator argues that even in the case that
 11 defendants’ Surveys constituted “reports,” said surveys do not contain the “material
 12 elements” of Relator’s fraud allegations. A true “public disclosure” must include all
 13 elements of fraud against an identified defendant. *Cooper v. Blue Cross & Blue*
 14 *Shield of Fla.*, 19 F.3d 562, 566 (11th Cir. 1994).

15 In *Foundation Aiding the Elderly*, defendants similarly alleged that CMS
 16 Surveys detailing substandard care provided at defendant nursing homes constituted
 17 “public disclosures” of allegations that the nursing homes had defrauded the
 18 government by providing “worthless services.” The Ninth Circuit disagreed: “even if
 19 the surveys do qualify as public disclosures, this action is still not barred because
 20 none of the disclosures in the surveys...reveal either the allegations or the
 21 transactions at issue.” *Foundation Aiding the Elderly*, 265 F.3d at 1012.

22 Thus, CMS Surveys which allege substandard care do not qualify as “public
 23 disclosures” unless they “fairly characterize the kind of fraud alleged” by a relator.
 24 *Id.*, at 1013. (“What is conspicuously missing...are any allegations that the named
 25 defendants misrepresented the level of care to the government and received payment
 26 for that substandard care... at most, these allegations only disclose the true set of
 27 facts, viz., that the facility in question provided substandard care”)(emphasis added).
 28

1 Undoubtedly, Defendants' referenced surveys reveal numerous failings at
 2 defendant Hospital and provide strong support for Relator's allegations. For example,
 3 the surveys discuss the rape of an adolescent female, dead patients not checked on
 4 until they were in rigor mortis, and hazardous conditions, among other deficiencies.
 5 (Exhibits F and P to Hooper Decl.) Importantly, Relator's reports of fraud and
 6 substandard care are what led to these Surveys in the first place; the fact that her
 7 complaints were substantiated by government regulators underscores the accuracy of
 8 her allegations.

9 ***3. Information about a prior medical malpractice lawsuit against***
 10 ***defendants is not a "public disclosure" of Relator's "allegations***
 11 ***and transactions"***

12 Defendants allege that a medical malpractice lawsuit filed against Defendants
 13 related to an alleged rape at the Hospital triggers the public disclosure bar. (Memo at
 14 5:5-7. Again, this is not true. A disclosure which contains only the "true state of
 15 facts" but not the "misrepresented state of facts" does not constitute a "public
 16 disclosure" under the statute. *Foundation Aiding the Elderly v. Horizon West, supra*.
 17 The medical malpractice complaint may contain the true state of facts as to the rape
 18 that occurred at the Hospital and the Defendants' chronic understaffing and patient
 19 deficiencies, but does not contain the misrepresented state of facts necessary to
 20 establish the "material elements" of the fraudulent transaction or scheme alleged by
 21 Relator in her complaint(s).

22 ***4. Defendants cannot show that published patient allegations qualify***
 23 ***as "public disclosures" of Relator's "allegations and transactions".***

24 Defendants do not present any evidence of, or specific claims that published
 25 allegations involving specific patients qualify as "public disclosures" of Relator's
 26 "allegations and transactions". Rather, they rely, unconvincingly, on the general
 27 arguments addressed above. Those general arguments are not enough to support a
 28

1 finding that there were prior “public disclosure” of the “allegations or transactions”
 2 underlying Relator’s qui tam suit. Accordingly, the Court need not look any further,
 3 and should deny Defendants’ motion.

4 **B. Relator is an Original Source**

5 Although Defendants have wholly failed to demonstrate that there have been
 6 public disclosures that would bar her complaint, Relator nonetheless addresses her
 7 status as an “original source” as to the patient allegations challenged by Defendants
 8 in their motion.

9 A relator can pursue her False Claims Act case if she is an “original source”
 10 pursuant to the statute, even where there have been public disclosures that would
 11 otherwise bar such a complaint. 31 U.S.C. § 3730(e)(4)(A). As defined by the FCA,
 12 an “original source”: (1) has direct and independent knowledge of the information on
 13 which the allegations are based and (2) has voluntarily provided the information to
 14 the government before filing this action, 31 U.S.C. § 3730(e)(4).

15 ***1. Relator is not required to demonstrate she is an “original source”***
 16 ***as to every allegation underlying her claims***

17 As an initial matter, it should be clarified that Relator need not demonstrate
 18 that she is an “original source” as to every allegation underlying her claims.
 19 However, the Supreme Court explained in *Rockwell* that a relator must qualify as an
 20 original source for each distinct kind of *claim* or *scheme* alleged², and that the
 21 original source status hinges on whether the relator has direct and independent
 22 knowledge of the information underlying the relator's own allegations in the FCA
 23 action, not the information underlying the public disclosure. 549 U.S. at 470–72, 476.

24 Moreover, “§ 3730(e)(4)(B) does not require that the qui tam relator possess
 25 direct and independent knowledge of all of the vital ingredients to a fraudulent
 26 transaction [but] refers to direct and independent knowledge of *any essential*

27 _____
 28 ² In the instant case, Relator alleges only one kind of scheme – billing for worthless services.

1 *element* of the underlying fraud transaction“ *United States ex rel. Springfield*
 2 *Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 656-57 (D.C.Cir.1994)(emphasis added).
 3 See also *Minnesota Ass'n of Nurse Anesthetists v. Allina Health System Corp.*, 276
 4 F.3d 1032, 1050 (8th Cir.2002) (“[T]o qualify as an original source, a relator does
 5 not have to have personal knowledge of all elements of a cause of action.”). So, for
 6 example, in *Minnesota Association of Nurse Anesthetists v. Allina Health System*
 7 *Corp.*, the court held that nurses’ direct knowledge of operating room practices,
 8 despite their lack of access to billing records, was sufficient to satisfy original source
 9 status.

10 **2. Relator possesses “direct and independent knowledge”.**

11 Relator’s complaint(s) adequately demonstrate that she has both “direct” and
 12 “independent” knowledge of the patient allegations and transactions detailed in her
 13 complaint(s). “Direct” knowledge implies a close connection between the relator and
 14 the discovery of fraud, as for example, when the relator’s information derives from
 15 her own investigation. *U.S. ex rel. Aflatooni v. Kitsap Physician Services*, 163 F.3d
 16 516, 525-26 (9th Cir. 1999). “Independent” knowledge is derived from substantive
 17 information that is not dependent on a public disclosure. *U.S. ex rel. Alcan Elec. And*
 18 *Engineering, Inc.*, 197 F.3d 1014, 1020 (9th Cir. 1999). Thus, independent knowledge
 19 is simply knowledge not gleaned from a public disclosure. Relator has demonstrated
 20 her direct and independent knowledge of the patient allegations challenged in
 21 Defendants’ Motion and must prevail in her opposition. The patients enumerated by
 22 Defendants -- 21;11; 24; 1; 12; 13; 15; 34; 37; 3; 8; 50; 26; 9; 27; 28; 29; 30; 33; 34;
 23 57; and 58 -- are addressed separately below:

24 **a) Patient Number 21**

25 Relator qualifies as an “original source” with regard to Patient 21. As defined
 26 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 27 information on which the allegations are based and (2) has voluntarily provided the
 28

1 information to the government before filing this action, 31 U.S.C. § 3730(e)(4).
 2 Relator has direct and independent knowledge of the events that occurred because
 3 she was an employee at the hospital when the incidents alleged in her complaint
 4 occurred. Relator was witness to the incidents of fraud involving patients and/or
 5 heard of about them directly and contemporaneously from co-workers who worked
 6 with the affected patients. In regards specifically to Patient 21, Relator recalls
 7 speaking to co-workers about the Patient and hearing about the Patient in meetings at
 8 the hospital. Uzeta Decl., Exhibit 1, at p. 359:7-25. Information obtained as a result
 9 of communications between an employee and her superior, or between two
 10 employees, whether written, oral, or electronic qualifies as “direct and independent
 11 knowledge” of alleged fraud. *U.S. ex rel. Lamers v. City of Green Bay*, 998 F. Supp.,
 12 971, 984 (E.D. Wisc. 1998)(finding "direct" knowledge based on observations of
 13 corporate employee that were revealed to the corporate president serving as relator),
 14 aff'd, 168 F.3d 1013, 1017-1018 (7th Cir. 1999) (holding that relator's own firsthand
 15 knowledge and investigative efforts qualified as direct and independent knowledge).
 16 Relator regularly worked on the unit where the incident occurred. Uzeta Decl.,
 17 Exhibit 1, at p. 359:7-25.

18 **b) Patient Number 11**

19 Relator qualifies as an “original source” with regard to Patient 11. As defined by the
 20 FCA, an “original source”: (1) has direct and independent knowledge of the
 21 information on which the allegations are based and (2) has voluntarily provided the
 22 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 23 Relator has direct and independent knowledge of the events that occurred because
 24 she was an employee at the hospital when the incidents alleged in her complaint
 25 occurred. In regards specifically to Patient 11, Relator has testified that she
 26 remembered the patient and recalled that the patient was staying on the first floor unit
 27 of the hospital when the incident occurred. Uzeta Decl., Exhibit 1, at p. 433:10-18.

1 Furthermore, Relator reported the lack of translation service being given to Patient 11
 2 in her emails to CMS/Joint Commission before the alleged disclosure that
 3 Defendants claim the information was from. Dkt. 109-3, at p. 10.

4 **c) Patient Number 24**

5 Relator qualifies as an “original source” with regard to Patient 24. As defined
 6 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 7 information on which the allegations are based and (2) has voluntarily provided the
 8 information to the government before filing this action, 31 U.S.C. § 3730(e)(4).
 9 Although Relator was not working at the hospital when the incident with Patient 24
 10 occurred, she was told of the event by co-workers when she began working there.
 11 Uzeta Decl., Exhibit 1, at pp. 349:3-18-350:18-23. Information obtained as a result of
 12 communications between an employee and her superior, or between two employees,
 13 whether written, oral, or electronic qualifies as “direct and independent knowledge”
 14 of alleged fraud. *U.S. ex rel. Lamers v. City of Green Bay*, 998 F. Supp., 971, 984
 15 (E.D. Wisc. 1998)(finding “direct” knowledge based on observations of corporate
 16 employee that were revealed to the corporate president serving as relator), *aff’d*, 168
 17 F.3d 1013, 1017-1018 (7th Cir. 1999) (holding that relator’s own firsthand
 18 knowledge and investigative efforts qualified as direct and independent knowledge).

19 **d) Patient Number 1**

20 Relator qualifies as an “original source” with regard to Patient 1. As defined
 21 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 22 information on which the allegations are based and (2) has voluntarily provided the
 23 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 24 Relator has direct and independent knowledge of the events that occurred because
 25 she was an employee at the hospital when the incidents alleged in her complaint
 26 occurred. In regards specifically to Patient 1, Relator reported the incident to CMS
 27 and the Joint Commission before the CMS Survey and the LA Times article
 28

1 mentioned by Defendants were released. Uzeta Decl., Exhibit 1 at p. 4. Furthermore,
2 Relator recalled these incidents and was able to remember that she was working on
3 the unit around the time the incident occurred. Uzeta Decl., Exhibit 1, at pp. 381:1-
4 25-382:1-21.

5 **e) Patient Number 12**

6 Relator qualifies as an “original source” with regard to Patient 12. As defined
7 by the FCA, an “original source”: (1) has direct and independent knowledge of the
8 information on which the allegations are based and (2) has voluntarily provided the
9 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
10 Relator has direct and independent knowledge of the events that occurred because
11 she was an employee at the hospital when the incidents alleged in her complaint
12 occurred. In regards specifically to Patient 12, Relator recalls specifically that
13 Patient 12 tried to hang herself two times. Uzeta Decl., Exhibit 1, at p. 384:1-25.
14 Furthermore, Relator was the mental health worker on duty during Patient 12’s first
15 attempted hanging and was the one who found her hanging from the sink. *Id.* 386:3-
16 10. Relator even recalls in detail the events leading up to the attempted hanging and
17 who was on the unit when the attempted hanging occurred. *Id.* 395:13-397:2 Finally,
18 Relator reported the incident to CMS and the Joint Commission before the
19 September 18, 2009, CMS survey was released. 109-3, at p. 7.

20 **f) Patient Number 13**

21 Relator qualifies as an “original source” with regard to Patient 13. As defined
22 by the FCA, an “original source”: (1) has direct and independent knowledge of the
23 information on which the allegations are based and (2) has voluntarily provided the
24 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
25 Relator has direct and independent knowledge of the events that occurred because
26 she was an employee at the hospital when the incidents alleged in her complaint
27 occurred. Relator was witness to the incidents of fraud involving patients and/or
28

1 heard of about them directly and contemporaneously from co-workers who worked
 2 with the patients in question. Information obtained as a result of communications
 3 between an employee and her superior, or between two employees, whether written,
 4 oral, or electronic qualifies as “direct and independent knowledge” of alleged fraud.
 5 *U.S. ex rel. Lamers v. City of Green Bay*, 998 F. Supp., 971, 984 (E.D. Wisc.
 6 1998)(finding “direct” knowledge based on observations of corporate employee that
 7 were revealed to the corporate president serving as relator), *aff’d*, 168 F.3d 1013,
 8 1017-1018 (7th Cir. 1999) (holding that relator’s own firsthand knowledge and
 9 investigative efforts qualified as direct and independent knowledge). In regards
 10 specifically to Patient 13, Relator had knowledge of the patient being admitted to the
 11 hospital in 2009. Uzeta Decl., Exhibit 1, at p. 406:1-15. Furthermore, Relator
 12 remembered that Patient 13 “was a high at-will risk patient” that was left
 13 unsupervised and AWOL’d (eloped from the unit). *Id.* at 407:1-14, 23-25.

14 **g) Patient Number 15**

15 Relator qualifies as an “original source” with regard to Patient 15. As defined
 16 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 17 information on which the allegations are based and (2) has voluntarily provided the
 18 information to the government before filing this action, 31 U.S.C. § 3730(e)(4).
 19 Relator has direct and independent knowledge of the events that occurred because
 20 she was an employee at the hospital when the incidents alleged in her complaint
 21 occurred. In regards specifically to Patient 15, Relator had personal knowledge of
 22 her and “...knew her very well.” Uzeta Decl., Exhibit 1, at p. 329:1-24. Furthermore,
 23 Relator goes into great detail of her recollection of the unit, the nurse on the unit, the
 24 authorization from the doctor, and the eventual denial of the 1:1 supervision by
 25 Cheryl Cook. *Id.* at 330:2-331:7.

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1 **h) Patient Number 34**

2 Relator qualifies as an “original source” with regard to Patient 34. As defined by the
3 FCA, an “original source”: (1) has direct and independent knowledge of the
4 information on which the allegations are based and (2) has voluntarily provided the
5 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
6 Relator has direct and independent knowledge of the events that occurred because
7 she was an employee at the hospital when the incidents alleged in her complaint
8 occurred. In regards specifically to Patient 34, Relator stated that she recalled this
9 patient very well and was put on 1:1’s several times prior to the incident involving an
10 assault. Uzeta Decl., Exhibit 1, at p. 340:5-14. Relator also remembers that this
11 patient was put on a 1:1 in her presence. *Id.* Furthermore, Relator remembers that this
12 patient often required seclusion and restraints. *Id.*

13 **i) Patient Number 37**

14 Relator qualifies as an “original source” with regard to Patient 37. As defined
15 by the FCA, an “original source”: (1) has direct and independent knowledge of the
16 information on which the allegations are based and (2) has voluntarily provided the
17 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
18 Relator has direct and independent knowledge of the events that occurred because
19 she was an employee at the hospital when the incidents alleged in her complaint
20 occurred. In regards specifically to Patient 37, Relator personally worked with this
21 patient. Uzeta Decl. Exhibit 1, at p. 379:4-18. Relator remembers Patient 37 being
22 taken off 1:1 supervision by DNO Diane Hobbes and the patient subsequently
23 mutilating herself. *Id.* See also, Relator’s August, 10, 2009 email to CMS reporting
24 patient incidents. Dkt. 109-3 at p. 4.

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1 **j) Patient Number 38**

2 Relator qualifies as an “original source” with regard to Patient 38. As defined
3 by the FCA, an “original source”: (1) has direct and independent knowledge of the
4 information on which the allegations are based and (2) has voluntarily provided the
5 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
6 Relator has direct and independent knowledge of the events that occurred because
7 she was an employee at the hospital when the incidents alleged in her complaint
8 occurred. In regards specifically to Patient 38, Relator personally recalls this patient
9 and remembers that she had to go to the ER on numerous occasions because she
10 inserted items into her vagina, into her mouth, and swallowed things she was not
11 supposed to. Uzeta Decl., Exhibit 1, at pp. 410:10-411:14.

12 **k) Patient Number 50**

13 Relator qualifies as an “original source” with regard to Patient 50. As defined
14 by the FCA, an “original source”: (1) has direct and independent knowledge of the
15 information on which the allegations are based and (2) has voluntarily provided the
16 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
17 Relator has direct and independent knowledge of the events that occurred because
18 she was an employee at the hospital when the incidents alleged in her complaint
19 occurred. In regards specifically to Patient 50, Relator personally worked with this
20 patient. Uzeta Decl., Exhibit 1, at p. 346:3-5.

21 **l) Patient Number 26**

22 Relator qualifies as an “original source” with regard to Patient 26. As defined
23 by the FCA, an “original source”: (1) has direct and independent knowledge of the
24 information on which the allegations are based and (2) has voluntarily provided the
25 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
26 Relator has direct and independent knowledge of the events that occurred because
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1 she was an employee at the hospital when the incidents alleged in her complaint
 2 occurred. In regards specifically to Patient 26, Relator personally recalls this Patient
 3 and the fact that he was hospitalized in an open unit when he was there to receive
 4 involuntary, acute treatment. Uzeta Decl., Exhibit 1, at pp. 477:13-479:6.

5 **m) Patient Number 9**

6 Relator qualifies as an "original source" with regard to Patient 9. As defined by the
 7 FCA, an "original source": (1) has direct and independent knowledge of the
 8 information on which the allegations are based and (2) has voluntarily provided the
 9 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 10 Relator has direct and independent knowledge of the events that occurred because
 11 she was an employee at the hospital when the incidents alleged in her complaint
 12 occurred. In regards specifically to Patient 9, Relator personally remembers this
 13 patient. Uzeta Decl., Exhibit 1, at pp. 422:24-423:1. Relator was informed that
 14 Patient 9 lit her sheets by individuals present during the incident. Uzeta Decl.,
 15 Exhibit 1, at p. 424:1-7.
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17 **n) Patient Number 27**

18 Relator qualifies as an "original source" with regard to Patient 27. As defined
 19 by the FCA, an "original source": (1) has direct and independent knowledge of the
 20 information on which the allegations are based and (2) has voluntarily provided the
 21 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 22 Relator has direct and independent knowledge of the events that occurred because
 23 she was an employee at the hospital when the incidents alleged in her complaint
 24 occurred. In regards specifically to Patient 27, Relator worked directly with Patient
 25 27 "on many, many occasions." Uzeta Decl., Exhibit 1, at p. 459:22-25. Relator
 26 personally witnessed Patient 27's multiple admissions at the Hospital and the lack of
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1 discharge planning which led to her exhausting all her Medicare lifetime benefits.
 2 Uzeta Decl., Exhibit 1, at pp. 461:1-462:20.

3 **o) Patient Number 28**

4 Relator qualifies as an “original source” with regard to Patient 28. As defined
 5 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 6 information on which the allegations are based and (2) has voluntarily provided the
 7 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 8 Relator has direct and independent knowledge of the events that occurred because
 9 she was an employee at the hospital when the incidents alleged in her complaint
 10 occurred. In regards specifically to Patient 28, Relator stated that this was “a patient
 11 she knew well” because of his multiple trips to the hospital. Uzeta Decl., Exhibit 1,
 12 at p. 462:21. Relator also recalled that this patient at one time was held on the first
 13 floor unit and suffered from depression. *Id.* at 463:1-15.

14 **p) Patient Number 29**

15 Relator qualifies as an “original source” with regard to Patient 29. As defined
 16 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 17 information on which the allegations are based and (2) has voluntarily provided the
 18 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 19 Relator has direct and independent knowledge of the events that occurred because
 20 she was an employee at the hospital when the incidents alleged in her complaint
 21 occurred. In regards specifically to Patient 29, Relator “remembered this patient
 22 well.” Uzeta Decl., Exhibit 1, at p. 469:9-13. She remembered that the patient paid a
 23 portion of her payment with cash and a portion was paid through a government
 24 program. *Id.*

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1 **q) Patient Number 30**

2 Relator qualifies as an “original source” with regard to Patient 30. As defined
 3 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 4 information on which the allegations are based and (2) has voluntarily provided the
 5 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 6 Relator has direct and independent knowledge of the events that occurred because
 7 she was an employee at the hospital when the incidents alleged in her complaint
 8 occurred. During Relator’s deposition, Defense counsel began questioning her
 9 regarding Patient by claiming that Patient 30 was a women who was in her thirties.
 10 Uzeta Decl., Exhibit 1, at p. 470:20-25. Relator corrected counsel and expressed her
 11 personally recollection of Patient 30 – an older gentleman who would go out on
 12 passes with his wife. *Id.* at pp. 471:10-15,472:1-6.

13 **r) Patient Number 33**

14 Relator qualifies as an “original source” with regard to Patient 33. As defined
 15 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 16 information on which the allegations are based and (2) has voluntarily provided the
 17 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 18 Relator has direct and independent knowledge of the events that occurred because
 19 she was an employee at the hospital when the incidents alleged in her complaint
 20 occurred. Uzeta Decl., Exhibit 1, at pp. 374:18-375:3. Relator recalls speaking to co-
 21 workers about this adolescent patient, specifically to a staff member who felt
 22 uncomfortable in what was being asked of her in dealing with the patient. *Id.* at
 23 378:2-16. Furthermore, Relator remembered that this patient was brought to the
 24 hospital by another facility, which means that the admitting department cleared the
 25 patient. *Id.*

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1 **s) Patient Number 56**

2 Relator qualifies as an “original source” with regard to Patient 56. As defined
 3 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 4 information on which the allegations are based and (2) has voluntarily provided the
 5 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 6 Relator has direct and independent knowledge of the events that occurred because
 7 she was an employee at the hospital when the incidents alleged in her complaint
 8 occurred. In regards specifically to Patient 56, Realtor recalls that this patient was in
 9 the hospital repeatedly. Uzeta Decl., Exhibit 1, at p. 79:20-80:23.

10 **t) Patient Number 57**

11 Relator qualifies as an “original source” with regard to Patient 57. As defined
 12 by the FCA, an “original source”: (1) has direct and independent knowledge of the
 13 information on which the allegations are based and (2) has voluntarily provided the
 14 information to the government before filing the action, 31 U.S.C. § 3730(e)(4).
 15 Relator has direct and independent knowledge of the events that occurred because
 16 she was an employee at the hospital when the incidents alleged in her complaint
 17 occurred. During her deposition, Realtor had a recollection of this patient although
 18 she could not – at the time - remember many details about the patient. Uzeta Decl.,
 19 Exhibit 1, at pp. 80:10-23, 455:8- 456:3.

20 **u) Patient Number 58**

21 Defendants reference this patient in their moving papers in passing (Memo at
 22 p. 11:23-24), but present no evidence suggesting a lack of knowledge with regard to
 23 this patient.
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1 **3. Relator voluntarily provided information regarding her allegations**
 2 **to the federal government prior to filing suit**

3 Relator prolifically reported incidents at defendant Hospital to federal
 4 regulators, for *two years* prior to filing suit. As she clearly states in her Fourth
 5 Amended Complaint, Relator reported violations to: “the Joint Commission, the
 6 Department of Public Health, Patients Rights of Los Angeles, the Medicare Fraud
 7 Unit of the Attorney General’s Office, and Office of the Inspector General, Wage and
 8 Hour Division of the Department of Labor and Centers for Medicare Services”
 9 (Dkt. 150, Para. 142).

10 Furthermore, Relator exchanged emails with Melissa Hart, counsel at OIG-
 11 HHS, and federal regulators at CMS. Dkt. 109-3. The dates of these emails clearly
 12 show that Relator’s reports precede the publication of newspaper articles and CMS
 13 surveys. *Id.* Most importantly, the dates on these emails show that Relator reported
 14 her allegations to the government *prior to* filing suit. *Id.* These emails are a small
 15 sampling of reports Relator has made to regulators.

16 In addition to proving that Relator informed the government of the fraud
 17 *before* she filed suit, these emails provide adequate evidence that her knowledge of
 18 the fraud, and of the “transactions” referenced in her complaint(s), is “direct” and
 19 “independent.” Relator’s emails to CMS describe patients/transactions in detail,
 20 showing that she did not just “copy” information from newspaper articles and
 21 government reports and inject it into her complaint(s). The emails reflect that Relator
 22 knows *details* about patients and incidents that are not mentioned in any articles or
 23 reports. For example, Relator knows the names of patients, their insurance plans,
 24 admitting dates, locations of incidents, and the staffers and administrators involved
 25 in such incidents. In her August 10, 2009 email to CMS regulators, Relator writes
 26 that,

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1 “In order to avoid having to pay for extra staffing, nursing administration
 2 overruled doctors’ orders for 1:1 staff to patient ratio in times of urgent need
 3 (for suicide or awol risk patients). This has resulted in both patient and
 4 employee injuries, as well as preventable patient elopements. These orders
 5 came directly from Linda Parks, CEO, and Diane Hobbs, CNO....On
 6 Adolescent unit (Cherokee) female patient _____, a known self-mutilator,
 7 was taken off 1:1 status by CNO Diane Hobbs and subsequently cut her arms
 8 with a sharp metal object recovered on the unit. This incident occurred in
 9 March 2009. Ms. _____ is a Medi-Cal recipient.”

10 Dkt. 109-3.

11 ***4. Relator “had a hand” in the public disclosure of the “transaction”***
 12 ***referenced in the Los Angeles Times***

13 In addition to the two statutory requirements issued by 31 U.S.C. § 3730(e)(4),
 14 the Ninth Circuit requires that a relator has “had a hand in the public disclosure of
 15 allegations that are a part of[t]he suit.” *United States ex. rel. Devlin v. State of*
 16 *California*, 84 F.3d 358, 360, n.3 (9th Cir. 1996). (internal quotations
 17 omitted)(emphasis added). All this requires is that a play some role in the public
 18 disclosure of newly asserted allegations. *U.S. ex rel. Barajas v. Northrup Corp.*, 5
 19 F.3d 407, 410 n.6. (9th Cir. 1993).

20 Here, Relator “had a hand” in the public disclosure of this medically
 21 unnecessary care because she approached the Los Angeles Times, and CMS, with
 22 information about medically unnecessary care provided at defendant Hospital prior to
 23 the public disclosure. Dkt. 109-3.

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1 **CONCLUSION**

2 On the basis of the foregoing facts and law, Relator Eidson respectfully
3 requests this Court deny Defendants' motion to dismiss. Relator has produced
4 evidence sufficient to show that there is a genuine issue of material fact as to whether
5 her action was based on public disclosures, and if it was, whether it may continue
6 nonetheless due to her status as an original source of the action's allegations.

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8 DATED: March 20, 2013

9
10 COLLEEN FLYNN
11 DISABILITY RIGHTS LEGAL CENTER
12 LAW OFFICES OF MARK ALLEN KLEIMAN
13 Attorneys for Plaintiff/Relator

14 /s/
Colleen Flynn